IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12686 of 2004
with
Special Civil Application No. 13895 of 2004
with
Special Civil Application No. 13929 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYALAL DHANJIBHAI SIJU VANKAR & Others.

Versus

STATE OF GUJARAT & Others.

Appearance:

1. Special Civil Application No. 12686 of 2004
MR KIRTIDEV R DAVE for Petitioner No. 1
Mr. KP Raval, AGP for Respondent No. 1-2 in
SCA No.12686 of 2004 and SCA No. 13929 of 2004
Mr. Mukesh A. Patel, AGP for respondent No.1 & 2
in SCA No. 13895 of 2004.
NOTICE SERVED for Respondent No. 2-6
MR HS MUNSHAW for Respondent No. 3-4
MR BHUSHAN B OZA for Respondent No. 5-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/01/2005

ORAL JUDGEMENT

In all these petitions, the respective petitioners have prayed for an appropriate writ, order or direction directing the respondents to put them into possession in the land of 100 sq.mtrs. allotted to them by order dated 10th March 1989.

2. It is the case of the petitioners that the petitioners were entitled to a plot of land on their undergoing operation under Family Planning Scheme in 1989 and accordingly each petitioner was allotted 100 sq.mtrs. area of plot by order of Taluka Panchayat, Bhuj-Kutch dated 10th March 1989. It is the case of the petitioners that though the petitioners were allotted the plots in question actual possession of the plot in question is not handed over to the petitioners and it was only a paper possession and in fact the respondents No. 5 and 6 had encroached upon and/or in possession of the said plots in question. It is further submitted that the petitioners had submitted the application in the year 1995 to the Collector, Kutch-Bhuj making a grievance that the petitioners are not handed over actual possession of the plots in question; some other persons are residing by putting construction on the said plots in question; several representations thereafter were made; and thereafter legal notices were served through their Advocate which came to be replied by the Taluka Development Officer in the year 1998 to the effect that actual possession is already handed over to the petitioners and if the petitioners would not have been handed over possession after the allotment of 1989 then they would have made the grievance within a reasonable time immediately. It is the case of the petitioners that in fact possession was not handed over to the petitioners and therefore the present Special Civil Applications are filed.

3. In response to the notice issued by this Court, an affidavit-in-reply is filed on behalf of the Taluka Development Officer, Kutch-Bhuj. It is stated in the affidavit-in-reply that in fact the petitioners were allotted their respective plots bearing Nos. 41, 39, and 40 and thereafter on 16.9.1989 the site was visited by the Sarpanch, Talati-cum-Mantri as well as Circle Inspector along with the allottees and the boundaries of the plot were determined and possession came to be handed over to the concerned allottees and Sanads were prepared at the site and the same were duly signed by the

petitioners and other allottees along with Talati-cum-Mantri, Circle Inspector and Sarpanch. It is also submitted that the petitioners were in possession of the plots right from 16.9.1989. It is the case of the respondents that even thereafter the petitioners as well as other allottees had approached the Talati-cum-Mantri for necessary papers to avail Bank loan against their respective plots and even the Talati-cum-Mantri had addressed a letter in that regard on 5.10.1989. It is also further submitted that there are no complaints from any quarters on the issue of possession though there are approximately 600 allottees in the village.

4. The factum of taking loan and/or making an application by the petitioners is denied by the petitioners in their affidavit-in-rejoinder. It is the case of the petitioners that though the petitioners were allotted respective plots in question and possession is said to have been given to the petitioners the same remained a paper possession and actual possession of plots is not handed over to the petitioners. On the other hand the Taluka Development Officer on oath by way of affidavit-in-reply has submitted that in fact the possession was handed over to the respective petitioners in the year 1989 itself and they were in possession since 1989. For that purpose, he has relied upon certain documentary evidences such as Kabulat etc., and the Kabulat itself is signed by the respective petitioners that possession of the plot is handed over to them. These are word against word and are all disputed questions of facts which cannot be determined in a petition under Article 226 of the Constitution of India.

4.1. Another aspect is also required to be considered, i.e., when the allotment was made in the year 1989, for the first time the petitioners made grievance with regard to not handing over actual possession in the year 1995, i.e., after a period of almost 6 years of allotment. If the petitioners would not have been handed over possession in the year 1989, then the natural conduct would be that the petitioners would have approached the authority immediately and/or in near future, but for the first time they had approached in the year 1995. Shri Dave, learned advocate appearing on behalf of the petitioners has submitted that the petitioners were making oral representations to the concerned authorities, but nothing is on record to show that any representation and/or submission was made with regard to not handing over possession. Be that as it may, in view of the facts and circumstances of the case, these are all disputed questions of facts, whether actual possession is handed

over to the petitioners or not and whether it was only a paper possession, such questions cannot be determined and decided in a petition under Article 226 of the Constitution of India.

5. Under the circumstances, all these Special Civil Applications are required to be dismissed and are hereby dismissed. However, it will be open for the petitioners to initiate appropriate proceeding in accordance with law if available to the petitioner inclusive of filing a suit which can be determined on adducing evidence and on appreciation of the same. Notice is discharged.

{ M.R. Shah, J. }

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